

Annex

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/18
Date: 12/07/2024

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Nicolas Guillou

SITUATION IN THE STATE OF PALESTINE

PUBLIC

Request pursuant to Rule 103 of the Rules of Procedure & Evidence

Source: Samira al-Khayam

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor	Counsel for the Defence
Legal Representatives of the Victims	Legal Representatives of the Applicant
Unrepresented Victims	Unrepresented Applicants (Participation/Reparation)
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States' Representatives The United Kingdom	Amicus Curiae

REGISTRY

Registrar Osvaldo Zavala Giler	Counsel Support Section
Deputy Registrar	
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

Pursuant to decision ICC-01/18-173-RED of 27 June 2024 and Rule 103(1) of the Rules of Procedure and Evidence, the undersigned makes an application to present submissions on *"[w]hether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords"*.

The Applicant

1. The Applicant is a law student in Palestine and a keen follower of issues pertaining to international humanitarian law. This is the first time that the Applicant is seeking to intervene in matters before an international criminal tribunal. In these circumstances, the Pre-Trial Chamber is requested to assess the utility of her proposed submissions on the basis of the substance of this request.

The Proposed Submissions

2. If granted permission to intervene, the Applicant will submit that Articles 19(1) and 19(2) of the Rome Statute, read together, clearly indicate that the United Kingdom would only be entitled to intervene in questions pertaining to jurisdiction over "a case" and, even then, in limited circumstances, namely; i) when it is investigating or prosecuting that case or has done so or ii) when it is a State "from which acceptance of jurisdiction is required under Article 12".

3. The Applicant will submit that the United Kingdom satisfies none of the above requirements and that its invitation to the Court to "satisfy itself of jurisdiction" in any potential case, under the guise of Article 19(1), is both premature and a disingenuous abuse of process designed by the former Conservative Party government to support the deeply unpopular government of Benjamin Netanyahu which has instructed a compliant team of lawyers to act behind the scenes and to mobilise international stakeholders in support of its

"Oslo" arguments while publicly denigrating the Court - denouncing it as "anti-semitic" and threatening, even blackmailing, its officers – both present and former.

4. The Applicant will submit that the United Kingdom's request is premature because there are no arrest warrants before the Court. Indeed, until there is an arrest warrant there is no 'case' before the Court which can engage Article 19. The current litigation is being conducted in the record of "the situation". In these circumstances, the Court should act to preserve the right of future potential suspects in "a case", whether Palestinian or Israeli, to litigate issues pertaining to jurisdiction and not to have the matter decided in advance by government actors, academics and NGOs - without those potential suspects' input and without, necessarily, their agreement to the arguments raised. Future fair trial rights will be impacted by an early determination on an issue which is, primarily, the preserve of suspects "in a case" and not those of interested stakeholders desirous of neutering the "situation" and depriving victims of their right to be heard (which would otherwise be the case in an Article 19(2) challenge brought during "the case").

5. In light of the above, the Applicant will seek to persuade the Court that should it, nevertheless, decide to entertain the United Kingdom's submissions on jurisdiction and similar observations, it should counterbalance the abuse of the Court's process and the potential harm to the Prosecutor's targeted individuals, in two ways:

- i) by asking the United Kingdom to clarify whether it has, indeed, been approached by the Government of Israel to act as its proxy, whether it continues to do so in light of the change of Government in the United Kingdom, and whether it will enforce an arrest warrant for and, otherwise deny airspace to, potential suspects;
- ii) by inviting the targeted individuals, **themselves**, to make submissions on the issues pertinent to the United Kingdom's

request. Failure of those individuals (who have been identified by the Prosecutor and are contactable) to engage with such an invitation may be presumed to be either acquiescence or a desire, on their part, to litigate the matters at stake, if necessary, at a later stage both when they deem it appropriate and through counsel of their own.

Conclusion

The Applicant respectfully requests permission to present an *amicus curiae* brief addressing the issues mentioned in paragraphs 2-5 above.


Respectfully,

Samira al-Khayam

12 July 2024

Ramallah, Palestine